

1 Corey Page (Cal. Bar No. 218789)
2 cpage@evansandpage.com
3 Geneva Page (Cal. Bar No. 235633)
4 gpage@evansandpage.com
5 EVANS & PAGE
6 2912 Diamond Street #346
7 San Francisco CA 94131
8 Ph: (415) 896-5072
9 Fax: (415) 358-5855

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHYSICIANS COMMITTEE FOR
RESPONSIBLE MEDICINE,
a nonprofit membership organization,

and

SETH AMMERMAN, MD,
an individual,

DONALD FORRESTER, MD,
an individual,

HEATHER SHENKMAN, MD,
an individual,

Plaintiffs

v.

TOM VILSACK, Secretary,
United States Department of Agriculture

and

XAVIER BECERRA, Secretary,
Department of Health and Human Services,

Defendants.

Case No. 3:21-cv-03088

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 **A. INTRODUCTION**

2 1. This is an action under the Administrative Procedure Act, 5 U.S.C. § 706, against the
 3 Secretary of the United States Department of Agriculture (“USDA”) and the Secretary of the
 4 Department of Health and Human Services (“HHS”). Defendants have jointly published new
 5 Dietary Guidelines for Americans every five years since 1980. Pursuant to the National Nutrition
 6 Monitoring and Related Research Act, this document must include “nutritional and dietary
 7 information and guidelines for the general public” based on “the preponderance of the scientific and
 8 medical knowledge which is current at the time the report is prepared.” 7 U.S.C. § 5341(a).

9 2. In December 2020, Defendants jointly issued the newest edition of the Dietary Guidelines
 10 for Americans. USDA & HHS, DIETARY GUIDELINES FOR AMERICANS, 2020-2025 (2020)
 11 (hereinafter Dietary Guidelines), https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf. According to the report, “diet-related chronic
 12 diseases, such as cardiovascular disease, type 2 diabetes, obesity, and some types of cancer, are
 13 very prevalent among Americans and pose a major public health problem. Today, more than half
 14 of adults have one or more diet-related chronic diseases.” *Id.* at p. viii. Yet due to their conflicts of
 15 interest, Defendants intentionally use inconsistent, misleading language and biochemical
 16 terminology to frustrate the purpose of the report and to avoid providing sound and accessible
 17 dietary information and guidance on how to overcome and reverse these chronic diseases. As a
 18 result, the Dietary Guidelines fail to reflect current “scientific and medical knowledge.”
 19 Defendants’ failure to comply with statutory mandates is arbitrary and capricious, *inter alia*, in
 20 violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

22 **B. JURISDICTION AND VENUE**

23 3. Pursuant to the Administrative Procedure Act, 5 U.S.C. § 706, Plaintiffs have exhausted all
 24 administrative remedies and now seek judicial review. This Court has both subject matter
 25 jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 706.
 26 This court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1331. Venue lies in
 27 this district under 5 U.S.C. § 703.

1 **C. PARTIES**

2 4. Plaintiff Physicians Committee for Responsible Medicine (“Physicians Committee”) is a
3 nonprofit public health organization that advocates for preventive medicine through proper
4 nutrition, encourages higher standards for ethics and effectiveness in medical research, and
5 conducts clinical research on the relationships between food and disease. Established in 1985, the
6 Physicians Committee is a national organization representing more than 175,000 members,
7 including 17,000 physicians, as well as other medical professionals, scientists, and lay persons.
8 More than 25,000 of these members reside in California. The organization brings this action on
9 behalf of its members and on behalf of itself.

10 5. Physicians Committee members who are laypersons are harmed by Defendants’ adoption of
11 the unlawfully developed Dietary Guidelines because these members are misled as to the harmful
12 effects of consuming meat and dairy, which in turn has a direct negative bearing on their health and
13 their families’ health.

14 6. Physicians Committee members who are physicians are harmed by Defendants’ adoption of
15 the unlawfully developed Dietary Guidelines because the Dietary Guidelines interfere with patient
16 education and undermine patient care. This is particularly true for Physicians Committee member
17 physicians who work in facilities, such as hospitals, that are required to serve meals that are based
18 on the Dietary Guidelines. California Code of Regulations (“C.C.R.”) tit. 15, § 1241. Such
19 member physicians are constrained by the Dietary Guidelines when they prescribe meal plans for,
20 and provide nutrition advice to, their patients. In these ways, the Dietary Guidelines impair the
21 physicians’ relationships with their patients, making it more difficult for the physicians to
22 accomplish their professional objectives of keeping their patients healthy.

23 7. The Dietary Guidelines also harm the Physicians Committee by compelling the organization
24 to expend scarce resources to accomplish Defendants’ statutorily mandated duty to inform
25 Americans of dietary steps to protect their health. By neglecting their duty, Defendants have
26 compelled the Physicians Committee to expend resources to counter misinformation regarding
27 healthy diets. One of the Physicians Committee’s principal organizational objectives, to which it
28 has devoted extensive time and resources, is to publicize to its members and the public the health

1 benefits of consuming plant-based foods and avoiding meat and dairy products. The Dietary
2 Guidelines seriously impair the work of the Physicians Committee and render it necessary for the
3 Physicians Committee to expend substantial time and resources that normally would be devoted to
4 other organizational initiatives to inform the public that the Dietary Guidelines reflect the economic
5 interests of the meat and dairy industries rather than sound public health advice.

6 8. Plaintiff Seth Ammerman, MD, has been a citizen and resident of San Francisco County,
7 California, since 1985. Dr. Ammerman is a member of the Physicians Committee and is board-
8 certified in pediatrics and adolescent medicine. Dr. Ammerman has more than 35 years of clinical
9 experience. Dr. Ammerman's pediatric and adolescent medicine practices focus on prevention and
10 early intervention through the promotion of healthy lifestyle behaviors. His patients are adolescents
11 making lifelong decisions about their health practices and underserved populations with higher
12 rates of obesity and related chronic health issues; these patients need straightforward
13 recommendations based on the best evidence. As a physician, Dr. Ammerman is harmed by the
14 Dietary Guidelines because the Dietary Guidelines impair the health of these patients, thereby
15 making it more difficult for Dr. Ammerman to accomplish his professional objectives of keeping
16 his patients healthy. Dr. Ammerman also faces the dilemma of having to make medical
17 recommendations that are contrary to the Dietary Guidelines, as well as exposure to liability based
18 on any alleged "reasonableness" standard derived from the Dietary Guidelines.

19 9. Plaintiff Donald Forrester, MD, has been a citizen and resident of Sacramento County,
20 California, since 1975. Dr. Forrester is a member of Physicians Committee and was board-certified
21 in family medicine from 1978 to 2018. Dr. Forrester has 40 years of clinical experience and
22 teaches and presents on the prevention and reversal of chronic conditions. In these roles, Dr.
23 Forrester understands that more than 70 percent of the nation's medical costs are due to chronic
24 conditions that result from poor food choices. Dr. Forrester is harmed by the Dietary Guidelines
25 because Defendants' failure to provide guidelines "based on the preponderance of the scientific and
26 medical knowledge" contributes to chronic conditions that could have been prevented, resulting in
27 avoidable suffering for his patients. Dr. Forrester provides lectures and interviews on health and
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1 nutrition, and this work is made more difficult when the Dietary Guidelines contradict sound
 2 scientific information and are contrary to his science-based nutrition teachings.

3 10. Plaintiff Heather Shenkman, MD, has been a citizen and resident of Los Angeles in Los
 4 Angeles County, California, since 2007. Dr. Shenkman is a member of the Physicians Committee
 5 and board-certified in general and interventional cardiology with more than 13 years of clinical
 6 experience. Dr. Shenkman's practice focuses on the prevention and improvement of heart disease
 7 with a focus on lifestyle interventions. As a physician, Dr. Shenkman is harmed by the Dietary
 8 Guidelines because the Dietary Guidelines impair the health of Dr. Shenkman's patients, thereby
 9 making it more difficult for Dr. Shenkman to accomplish her professional objectives of keeping her
 10 patients healthy. Dr. Shenkman also faces the dilemma of having to make medical
 11 recommendations that are contrary to the Dietary Guidelines, as well as exposure to liability based
 12 on any alleged "reasonableness" standard derived from the Dietary Guidelines.

13 11. Defendants are Secretary Tom Vilsack of USDA and Secretary Xavier Becerra of HHS.
 14 USDA and HHS are United States agencies within the meaning of 5 U.S.C. § 552(f)(1). USDA
 15 regulates matters concerning agriculture, and HHS regulates matters regarding human health in the
 16 United States.

17 **D. LEGAL FRAMEWORK**

18 12. At least once every five years, Defendants "shall publish a report entitled Dietary
 19 Guidelines for Americans." 7 U.S.C. § 5341(a)(1) (internal quotations removed).

20 13. "Each such report shall contain nutritional and dietary information and guidelines for the
 21 general public" that are "based on the preponderance of the scientific and medical knowledge
 22 which is current at the time the report is prepared." *Id.* § 5341(a)(1)–(2).

23 14. By statute, the Dietary Guidelines "shall be promoted by each Federal agency in carrying
 24 out any Federal food, nutrition, or health program." *Id.* § 5341(a)(1).

25 15. "Any Federal agency that proposes to issue any dietary guidance for the general population
 26 or identified population subgroups shall submit the text of such guidance" to Defendants, who then
 27 "shall review and approve or disapprove such guidance to assure that the guidance either is

1 consistent with the ‘Dietary Guidelines for Americans’ or that the guidance is based on medical or
 2 new scientific knowledge which is determined to be valid by the Secretaries.” *Id.* § 5341(b)(1)–(2).

3 16. Under this framework, the “U.S. Government uses the Dietary Guidelines as the basis of its
 4 food assistance meal programs, nutrition education efforts, and decisions about national health
 5 objectives.” Dietary Guidelines at p. 12. Defendants also may block other agencies from issuing
 6 dietary guidance that Defendants view as inconsistent with the Dietary Guidelines.

7 17. For example, food served in schools and child care facilities under USDA’s child nutrition
 8 programs must “reflect the most recent,” and be “consistent with the goals of the most recent,”
 9 Dietary Guidelines. 42 U.S.C. §§ 1758(a)(4)(C)(i), (f)(1)(A), 1766(g)(2)(B)(i)(I), (u)(3)(C)(iv)(I),
 10 1779(b)(1)(C)(i).

11 18. Similarly, “the Older Americans Act Nutrition Program incorporate[s] the *Dietary*
 12 *Guidelines* in menu planning; the Special Supplemental Nutrition Program for Women, Infants, and
 13 Children applies the *Dietary Guidelines* in its program and educational materials; and the Healthy
 14 People objectives for the Nation include objectives based on the *Dietary Guidelines*.” Dietary
 15 Guidelines at p. 12.

16 19. Federal nutrition programs require adherence to the Dietary Guidelines as a condition of
 17 receiving grant funds. *E.g.*, 7 U.S.C. § 2036a(b); 42 U.S.C. § 3030g-21(2)(A)(i) (mandating that
 18 State nutrition programs for older Americans “shall . . . comply with the most recent Dietary
 19 Guidelines for Americans”).

20 20. “The Dietary Guidelines also provides a critical structure for State and local public health
 21 promotion and disease prevention initiatives.” *Id.*; *e.g.*, CAL. EDUC. CODE § 51210.4(c); CAL.
 22 HEALTH & SAFETY CODE § 1596.808(d), 1596.8661(c).

23 21. The Dietary Guidelines have been incorporated into regulations in the vast majority of
 24 states, forming the basis of the mandatory minimum nutritional requirements for assisted living
 25 facilities, children’s residential facilities, hospitals, and recreational camps throughout the country.
E.g., C.C.R. tit. 15, §§ 1241, 1461; C.C.R. tit. 22, § 7638.5(a)(2).

27 22. The Dietary Guidelines also provide “foundational, evidence-based nutrition guidance for
 28 use by individuals and those who serve them in public and private settings, including health

1 professionals, public health and social service agencies, health care and educational institutions,
 2 researchers, agricultural producers, food and beverage manufacturers, and more.” Dietary
 3 Guidelines at p. 12.

4 **E. STATEMENT OF FACTS**

5 23. In developing the current Dietary Guidelines, Defendants restricted the usual broad scope of
 6 the report by “add[ing] a new step of identifying topics and scientific questions to begin the process
 7 of developing the next Dietary Guidelines.” *Id.* at p. 8. Defendants “identified potential topics and
 8 supporting scientific questions that were of greatest importance and relevance to Federal nutrition
 9 programs, policies, and consumer education priorities.” *Id.*

10 24. After receiving and reviewing public comments, Defendants “posted the final topics and
 11 questions, . . . defining which areas of nutrition expertise were needed on the Committee.” *Id.*

12 25. Defendants then appointed a federal advisory committee “with the single, time-limited task
 13 of reviewing the *2015-2020 Dietary Guidelines*, examining the evidence on the selected nutrition
 14 and public health topics and scientific questions, and providing independent, science-based advice
 15 and recommendations to USDA and HHS. The 20 nationally recognized scientific experts
 16 appointed to the Committee represented a mix of practitioners, epidemiologists, scientists, clinical
 17 trialists, and others from every region of the United States.” *Id.*

18 26. The “Committee worked collaboratively for 16 months and deliberated on the scientific
 19 reviews in six meetings, all of which were open to the public. Two of the six meetings included an
 20 opportunity for the public to provide oral comments to the Committee. An ongoing period for
 21 written public comments to the Committee spanned 15 months of its work.” *Id.* at p. 11.

22 27. “The Committee’s work culminated in a comprehensive scientific report on the current state
 23 of nutrition science and provided advice to the Departments for . . . development of this 9th edition
 24 of the Dietary Guidelines.” *Id.* at p. v. “This report was not a draft of the Dietary Guidelines; it
 25 was a scientific document that detailed the Committee’s evidence review and provided advice to
 26 USDA and HHS.” *Id.* at p. 8 (footnote omitted).

27 28. The Committee found that “[c]ommon characteristics of dietary patterns associated with
 28 positive health outcomes include higher intake of vegetables, fruits, legumes, whole grains, low- or

1 nonfat dairy, lean meat and poultry, seafood, nuts, and unsaturated vegetable oils and low
2 consumption of red and processed meats, sugar-sweetened foods and drinks, and refined grains. In
3 addition, the Committee found that negative (detrimental) health outcomes were associated with
4 dietary patterns characterized by higher intake of red and processed meats, sugar-sweetened foods
5 and beverages, and refined grains.” Dietary Guidelines Advisory Committee, Scientific Report of
6 the 2020 Dietary Guidelines Advisory Committee pt. A, at pp. 8–9 (2020) (hereinafter “DGAC
7 Report”), https://www.dietaryguidelines.gov/sites/default/files/2020-07/ScientificReport_of_the_2020DietaryGuidelinesAdvisoryCommittee_first-print.pdf.

9 29. “The Committee’s review found that reducing saturated fat intake by replacing it with
10 unsaturated fats, particularly polyunsaturated fat, lowers the incidence of CVD [cardiovascular
11 disease] in adults. . . . The recommended shift from saturated to unsaturated fats occurs best within
12 the context of a healthy dietary pattern consisting of higher intakes of vegetables, fruits, legumes,
13 whole grains, nuts and seeds, with some vegetable oils, low-fat dairy, lean meat and poultry, and
14 fatty fish and lower intakes of red and processed meats, sugar-sweetened foods and drinks, and
15 refined grains.” *Id.* at pt. A, at p. 9.

16 30. “To reduce saturated fat intake, the dietary pattern should replace sources of saturated fat
17 with sources of polyunsaturated fats by substituting certain animal-source foods, especially
18 processed meats and certain high-fat dairy products, with sources of polyunsaturated fats, such as
19 seafood, seeds, nuts, legumes, and appropriate vegetable oils.” *Id.* at pt. B, ch. 2, at p. 9.

20 31. Defendants “posted the scientific report and asked the public for comments. The
21 Departments received written comments on the report over a 30-day period and also held an online
22 meeting to hear oral comments.” Dietary Guidelines at p. 11.

23 32. Following the public comment period, Defendants’ “development of the 2020–2025 Dietary
24 Guidelines involved a step-by-step process of writing, review, and revision conducted by a writing
25 team of Federal staff from USDA and HHS. The writing team included Federal nutrition scientists
26 with expertise in the Dietary Guidelines and related research and programs as well as specialists
27 with expertise in communicating nutrition information.” *Id.* at pp. 11–12.

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33. On December 29, 2020, Defendants jointly issued the most recent edition of the Dietary Guidelines.

The Dietary Guidelines Fail to Include

“Nutritional and Dietary Information and Guidelines for the General Public”

34. Despite the statutory mandate to provide “nutritional and dietary information and guidelines for the general public,” 7 U.S.C. § 5341(a)(1), the new edition states, “The Dietary Guidelines for Americans is developed and written for a professional audience.” Dietary Guidelines at p. 13.

35. Of the 149 pages of substantive content, the Dietary Guidelines devote only one to “actionable consumer messages and resources” for “individuals, families, and communities.” See *id.*

36. When describing foods to avoid for optimal health, the Dietary Guidelines use technical terms instead of commonplace terms for the foods themselves. The Dietary Guidelines use the term “saturated fat” 158 times, including on the “actionable consumer messages and resources” page, *see id.*, without clearly explaining how to identify its sources.

37. The Dietary Guidelines hide the fact that the leading sources of saturated fat are dairy products and meat and go so far as to suggest that grains are somehow major sources of saturated fat: “The top sources of saturated fat for adults are sandwiches (e.g., deli sandwiches, burgers, tacos, burritos, grilled cheese, hot dogs) and other grain-based mixed dishes (e.g. spaghetti and meatballs, casseroles, quesadillas) that typically contain ingredients from several food groups that are not in nutrient-dense forms, including grains, protein foods, and dairy.” *Id.* at p. 102; *see id.* at p. 45 fig.1-11.

38. Such text is misleading because grains have virtually no saturated fat. *See, e.g., id.* at p. 45 (“Grain-based foods in nutrient-dense forms limit the additions of added sugars, saturated fat, and sodium.”). Rather, dairy, meat, poultry, and eggs are high in saturated fat whether they are included in sandwiches or eaten on their own. *See id.* at pp. 44, 45 fig.1-11; DGAC Report pt. D, ch.9, at p. 2.

39. Equally misleading is the image that takes up nearly half of the page that starts the “Saturated Fat” subsection. The image primarily features avocados, nuts, and seeds, even though

not one of these foods is a top source of saturated fat, as demonstrated in the figure on the very next page. Dietary Guidelines at pp. 44, 45 fig.1-11. In an accurate image, dairy and meat would instead be featured, consistent with the statement that “[s]aturated fat is commonly found in higher amounts in high-fat meat, full-fat dairy products (e.g., whole milk, ice cream, cheese), butter,” and oils. *Id.* at p. 44. Although the Guidelines correctly note that saturated fat poses health risks, these choices of wording and images deliberately hide its major sources from the public.

The Dietary Guidelines Do Not Reflect the “Preponderance of the Scientific and Medical Knowledge Which is Current”

40. The Dietary Guidelines provide a particularly harmful definition of “nutrient dense”: “Vegetables, fruits, whole grains, seafood, eggs, beans, peas, and lentils, unsalted nuts and seeds, fat-free and low-fat dairy products, and lean meats and poultry—when prepared with no or little added sugars, saturated fat, and sodium—are nutrient-dense foods.” *Id.* at pp. x, 73, 95, 110, 123.

41. Based on this definition, the Dietary Guidelines deem vegetable oil a nutrient-dense food but regular canned black beans, which contain added salt, not. Dietary Guidelines at p. 22 fig.1-2. This is not supported by science. Moreover, as noted above, dairy, meat, poultry (including so-called “lean” varieties), and eggs are high in saturated fat, which the Dietary Guidelines warn against.

42. The figures in the Dietary Guidelines repeatedly demonstrate that children consume too much saturated fat and sodium. *Id.* at pp. 77 fig.3-2, 79 fig.3-4, 82 fig.3-6, 85 fig.3-8. Yet the Dietary Guidelines continue to promote meat and dairy, foods that contain them in large amounts.

43. For example, the “Avoid Foods Higher in Sodium” section for toddlers states, “In addition to keeping sodium intake within limits for toddlers (see *Appendix I*), another reason to avoid high-sodium foods is that taste preferences for salty food may be established early in life.” *Id.* at p. 61 (emphasis in original). Yet the recommendations for toddlers contravene this advice, stating, “For dairy, families can introduce yogurt and cheese . . . before 12 months” (*id.* at p. 60), even though dairy products are a top source of sodium in the diet. See, e.g., DGAC Report pt. D, ch. 14, at p.

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1 44. The Dietary Guidelines include “dairy (including milk, yogurt, and cheese)” in the healthy
 2 meal pattern for toddlers, even though toddlers already consume more dairy than recommended.
 3 Dietary Guidelines at pp. 63, 65 fig.2-2.

4 45. The section on beverages reiterates the push to consume milk but lacks any scientific
 5 support for this recommendation: “Beverages that are calorie-free—especially water—or that
 6 contribute beneficial nutrients, such as fat-free and low-fat milk and 100% juice, should be the
 7 primary beverages consumed.” *Id.* at p. 35.

8 46. The Dietary Guidelines also incorrectly state that “[m]ost individuals would benefit by
 9 increasing intake of dairy” (*id.* at p. 33), even though there is no convincing evidence that this is
 10 true. Moreover, the section does not mention the well-accepted scientific evidence showing the
 11 association between dairy intake and prostate cancer, a leading cause of cancer death. World
 12 Cancer Research Fund & American Institute for Cancer Research, Continuous Update Project, Diet,
 13 Nutrition, Physical Activity and the Prevention of Cancer, Summary of Evidence (2018), <https://www.wcrf.org/sites/default/files/Matrix-for-all-cancers-A3.pdf>.

15 47. Similarly, the Dietary Guidelines are unclear as to whether soy milk meets its dairy
 16 recommendation or may be offered only as an alternative for individuals who are lactose intolerant.
 17 *See* Dietary Guidelines at p. 33.

18 48. In the Dietary Guidelines’ calorie level for adults table, the number of recommended
 19 servings of nearly every food group rises as the number of daily calories consumed rises. Dietary
 20 Guidelines at pp. 96 tbl.4-1, 125 tbl.6-1. The dairy group is the sole exception, however; the table
 21 recommends the same number of dairy servings regardless how low an adult’s calorie intake drops.
 22 *Id.* This defies logic and suggests that the Dietary Guidelines’ dairy recommendation are based on
 23 something other than “scientific and medical knowledge”—namely the economic interests
 24 described below.

25 49. Defendant Becerra oversees HHS, of which the National Institutes of Health (“NIH”) is a
 26 component agency. Through NIH, Defendant Becerra issues publications regarding lactose
 27 intolerance, which is the inability to digest lactose, the primary carbohydrate in dairy.

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1 50. Once regarded as a disease, lactose intolerance is now recognized as the biological norm
2 after infancy for all mammals, including humans. NIH, NIH Consensus Development Conference:
3 Lactose Intolerance and Health 30 (2010) (hereinafter “NIH Consensus Report”), https://consensus.nih.gov/2010/images/lactose/lactose_abstracts.pdf. For lactose intolerant individuals, consuming
4 dairy causes diarrhea, pain, and other, sometimes serious, digestive symptoms. *Id.* at pp. 35–36.

5 51. Lactose intolerance is prevalent among people of color. According to Defendant Becerra,
6 “specific populations show high levels of intolerance, including approximately: 95 percent of
7 Asians, 60 percent to 80 percent of African Americans and Ashkenazi Jews, 80 percent to 100
8 percent of American Indians, and 50 percent to 80 percent of Hispanics.” NIH, Lactose
9 Intolerance: Information for Health Care Providers 2 (2006) (hereinafter “NIH Fact Sheet”), https://www.nichd.nih.gov/sites/default/files/publications/pubs/documents/NICHD_MM_Lactose_FS_rev.pdf.

10 52. In contrast, most people of northern European descent carry a genetic mutation enabling the
11 digestion of lactose. NIH Consensus Report at 30. “Lactose intolerance is least common among
12 people of northern European origin, who have a lactose intolerance prevalence of only about 2
13 percent.” NIH Fact Sheet at 2.

14 53. About 24 percent of Americans belong to populations that are frequently or predominantly
15 lactose intolerant. *See* U.S. Census Bureau, QuickFacts: United States (2019), <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

16 54. The Dietary Guidelines purport to have considered “ethnic populations who have
17 disproportionately and/or historically been affected by diet-related disparities” and to have
18 prioritized “scientific studies that examine the relationship between diet and health across all life
19 stages, in men, women, and children from diverse racial and ethnic backgrounds.” Dietary
20 Guidelines at p. 4.

21 55. Yet Defendants address this common and normal condition in the Dietary Guidance only
22 once, stating “Individuals who are lactose intolerant can choose low-lactose and lactose-free dairy
23 products.” Dietary Guidelines at p. 33.

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1 56. Instead, and despite high saturated fat and the prostate cancer concern noted above,
2 Defendants repeatedly recommend dairy—referencing it more than one hundred times in the
3 Dietary Guidelines—even though they know that nearly a quarter of American adults cannot
4 consume it.

5 57. The Dietary Guidelines recognize that healthful dietary patterns feature “relatively lower
6 consumption of red and processed meats” and that detrimental health outcomes are associated with
7 “higher intake of red and processed meats.” *Id.* at p. 23. “Replacing processed or high-fat meats
8 with beans, peas, and lentils would have similar benefits, as well as increasing dietary fiber, a
9 dietary component of public health concern.” *Id.* at p. 34.

10 58. Indeed, red meat, regardless of fat content, is a Group 2A carcinogen according to the
11 World Health Organization due to its association with “cancers of the colorectum, pancreas, and
12 prostate.” International Agency for Research on Cancer, Working Group on the Evaluation of
13 Carcinogenic Risks to Humans Volume 114, Red Meat and Processed Meat 497 (2018), <https://monographs.iarc.who.int/wp-content/uploads/2018/06/mono114.pdf>.

14 59. Red meat consumption is associated with an increased risk of overweight, obesity, and type
15 2 diabetes. DGAC Report pt. D, ch. 8, at p. 39 tbl.D8.1.

16 60. Plant protein sources are linked to lower all-cause or cardiovascular-specific mortality, and
17 animal protein sources are linked to increased cardiovascular mortality. *Id.*

18 61. As such one might expect the Dietary Guidelines to list meat last as a “protein food” choice.
19 Instead, the Dietary Guidelines repeatedly list meat as the first recommended protein source. *E.g.*,
20 Dietary Guidelines at pp. 20 tbl.1-1, 29, 100 fig.4-4. Plant foods rich in protein are listed last and in
21 the smallest quantity (“Nuts, Seeds, Soy Products”) or not at all (“Beans, Peas, Lentils”), *see id.*,
22 even though the Dietary Guidelines state, “Beans, peas, and lentils—a subgroup of both the
23 vegetable and protein foods groups—also are underconsumed by most adults.” *Id.* at p. 100.

24 62. The Dietary Guidelines also promote meat for infants and toddlers for iron (*id.* at p. 59), and
25 zinc (*id.* at p. 60), even though other foods provide these nutrients without the health risks
26 associated with meat.

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1 63. The Dietary Guidelines' imagery is similarly devised to mislead the public. The figures on
 2 page 100 show that adults aged 31 through 59 consume too much from the "Meat, Poultry, Eggs"
 3 category and too little of nearly every vegetable category. *See id.* at p. 100 fig.4-4. Yet the only
 4 food pictured on the page is a turkey sandwich. *Id.*

5 **The Dietary Guidelines' Flaws Arise Out of Defendants' Conflicts of Interest**

6 64. The Dietary Guidelines state, "Many individuals enter the adult life stage with an unhealthy
 7 dietary pattern already established from the childhood and adolescent years. A concerted effort to
 8 change this trajectory and support adults in adopting a healthy dietary pattern is needed for better
 9 health and to promote the well-being of family and friends across life stages." *Id.* at p. 93.

10 65. This text suggests that substantive measures are needed to change adult eating behaviors
 11 established earlier in life. But the Dietary Guidelines' recommendations are modest and offer no
 12 plan for a concerted effort to change eating behaviors.

13 66. The Dietary Guidelines also claim to be "applicable to the overall U.S. population,
 14 including healthy individuals and people at risk of diet-related chronic conditions and diseases,
 15 such as cardiovascular disease, type 2 diabetes, and obesity." Dietary Guidelines at p. 10.

16 67. But scientific evidence shows that people with heart disease or diabetes and women
 17 previously treated for breast cancer who follow diets that are within the Dietary Guidelines tend to
 18 do poorly. Those who adopt much more plant-based diets do substantially better. *See, e.g.*, DGAC
 19 pt. D, ch. 8, at pp. 13–14, 21, 25. The diet steps recommended in the Dietary Guidelines resemble
 20 those used in the control groups of nutrition studies—that is, those receiving no effective treatment.
 21 If clinicians were to base their medical recommendations on the Dietary Guidelines, patients with
 22 chronic conditions and diseases would be harmed.

23 68. The Dietary Guidelines are *supposed* to benefit the "general public" and not scientists,
 24 biochemists, Nobel Laureates, or others with particular expertise. *See* 7 U.S.C. § 5341(a)(1). Yet
 25 Defendants state that the current Dietary Guidelines are "developed and written for a professional
 26 audience." Dietary Guidelines at p. 13. Defendants intentionally use inappropriate and inconsistent
 27 language, intentionally misleading examples and illustrations, ambiguous phrases, and biochemical
 28 terminology to avoid providing clear dietary information and guidance for the general public

1 regarding the health benefits of reducing consumption of meat, dairy, and eggs, which are the only
 2 sources of cholesterol and the main sources of saturated fat in the diet. This is due to Defendants'
 3 conflicts of interest.

4 69. Defendant Vilsack oversees USDA, which "was responsible for chartering the 2020 Dietary
 5 Committee and serving as the administrative lead for the 2020-2025 Dietary Guidelines." DGAC
 6 Report pt. C, at p. 4.

7 70. Defendant Vilsack has a statutory duty to "foster and assist in the development of new or
 8 expanded markets (domestic and foreign) and new and expanded uses and in the moving of larger
 9 quantities of agricultural products through the private marketing system to consumers in the United
 10 States and abroad." 7 U.S.C. § 1622(e)(1). These "agricultural products" include "dairy products,
 11 livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including
 12 processed and manufactured products[.]" *Id.* § 1626.

13 71. Conflicts of interest such as this prevent Defendants from making unbiased decisions based
 14 on scientific and medical knowledge.

15 72. By carefully, intentionally, and repeatedly using artful language in crucial aspects of the
 16 Dietary Guidelines, Defendants have deceived the general public and compromised consumer
 17 health in favor of promoting specific food products despite their statutory mandate to base the
 18 Dietary Guidelines on the preponderance of current scientific and medical knowledge.

19 **Federal Funding to State Administered and Private Nonprofit Programs for**
 20 **Nutrition Assistance and Education is Conditioned Upon**
 21 **Adherence to Adoption of the Dietary Guidelines**

22 73. Federal law makes funding to states that administer programs for nutrition assistance and
 23 education contingent on adherence to the Dietary Guidelines in meal planning and nutrition
 24 education. States providing meals under the Older Americans Act must provide meals that conform
 25 to the Dietary Guidelines. 42 U.S.C. § 3030g-21(2)(A)(i). The Special Supplemental Nutrition
 26 Program for Women, Infants, and Children allows states to use federal funding to implement
 27 nutrition education and obesity prevention programs only if the recommendations to prevent

1 obesity follow the Dietary Guidelines, 7 U.S.C. § 2036a(b), even though the Dietary Guidelines
 2 recommend foods that increase the risk for obesity.

3 74. The Dietary Guidelines impose obligations on schools receiving federal funding assistance
 4 offered by the National School Lunch Act. One such obligation is that schools must, in every meal,
 5 offer students dairy products in the amounts and formulations recommended by the Dietary
 6 Guidelines. 42 U.S.C. § 1758(a)(2)(A)(i).

7 75. States have incorporated the Dietary Guidelines into their own laws. For example,
 8 California hospitals must serve meals that conform to the Dietary Guidelines. C.C.R. tit. 15, §
 9 1241.

10 **F. PLAINTIFFS' CLAIM FOR RELIEF**

11 76. The Administrative Procedure Act authorizes a reviewing court to hold unlawful and set
 12 aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
 13 accordance with law.” 5 U.S.C. § 706(2)(A).

14 77. Agency action is present when legal consequences, such as the receipt or denial of federal
 15 grants, flow from an agency’s conduct.

16 78. Public health laws implemented by Defendants, as well as by other government bodies,
 17 mandate, or condition receipt of public funding on, adherence to the Dietary Guidelines.

18 79. Such laws give legal consequence to the substantive terms of the Dietary Guidelines issued
 19 by Defendants.

20 80. Defendants’ failure to reflect the preponderance of current scientific and medical knowledge
 21 in the new Dietary Guidelines is arbitrary and capricious in that such failure subverts Defendant
 22 Vilsack’s child nutrition programs, Defendant Vilsack’s Supplemental Nutrition Assistance
 23 Program, and Defendant Becerra’s Older Americans Act Nutrition Program, among other
 24 statutorily created programs.

25 81. Defendants’ intentional use of inconsistent language and inaccessible, biochemical
 26 terminology throughout the Dietary Guidelines to hide the ill effects of consuming meat and dairy
 27 is similarly arbitrary and capricious.

28

82. Defendants' failure to overcome their conflicts of interest in issuing the Dietary Guidelines is similarly arbitrary and capricious.

83. Plaintiffs challenge the Dietary Guidelines as enacted and, separately, as made automatically binding with legal consequences that flow to agencies and individuals through the network of mandates that adhere to the substance of the Dietary Guidelines.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- Declare that Defendants violated the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), by issuing dietary guidelines that are not based on the preponderance of current scientific and medical knowledge;
 - Order Defendants to withdraw those portions of the Dietary Guidelines that use inconsistent language to hide the ill effects of consuming meat and dairy and reissue such portions with healthful recommendations based on the preponderance of current scientific and medical knowledge;
 - Order Defendants to remove those statements in the Dietary Guidelines that proclaim healthy dietary patterns must feature dairy products;
 - Order Defendants to withdraw portions of the Dietary Guidelines that do not include “Bean, Peas, Lentils” as acceptable protein sources and reissue such portions with healthful recommendations based on the preponderance of current scientific and medical knowledge; and
 - Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: April 28, 2021

EVANS & PAGE

By: /s/ Corey Page
Corey Page, Esq.
Attorney for Plaintiffs